IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 27563 of 2005(F)

ST.874/2005 OF J.M.F.C.-III,THRISSUR
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PETITIONERS:
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1. **TRICHUR AUTO CENTRE,**
   HPC DEALER, MARATHAKARA, TRICHUR,
   REPRESENTED BY ITS MANAGING PARTNER,
   M.S.MATHEW.

2. **M.S.MATHEW, MANAGING PARTNER,**
   TRICHUR AUTO CENTRE, HPC DELAER,
   MARATHAKARA, TRICHUR.

3. **C.M.MARY, PARTNER,**
   TRICHUR AUTO CENTRE, HPC DEALER,
   MARATHAKARA, TRICHUR.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN

RESPONDENTS:
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1. **THE ASSISTANT CONTROLLER,**
   LEGAL METROLOGY, TRICHUR.

2. **STATE OF KERALA, REPRESENTED BY THE**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

3. **THE CONTROLLER OF LEGAL METROLOGY,**
   TRIVANDRUM.

4. **THE DIRECTOR OF LEGAL METROLOGY,**
   GOVERNMENT OF INDIA, MINISTRY OF CONSUMER
   AFFAIRS & PUBLIC DISTRIBUTION, DEPT. CONSUMER
   AFFAIRS, (DIRECTORATE OF WEIGHTS & MEASURES),
   KRISHNIBHAVAN, NEW DELHI-110 001.

**5. THE UNION OF INDIA, REP. BY THE
SECRETARY TO GOVERNMENT OF INDIA,
MINISTRY OF CONSUMER AFFAIRS & PUBLIC DISTRIBUTION
CENTRAL SECRETARIAT, TRIVANDRUM.**

**R4 & R5 BY ADV. SRI.DEEPU THANKAN
GOVERNMENT PLEADER SRI. SHYSON P. MANGUZHA**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 27563/2005 F

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE COMPLAINT FILED BY THE R1 DT. 10/2/2005 BEFORE THE JFCM-III, TRICHUR.

EXT.P2. COPY OF THE CERTIFICATE OF VERIFICATION DT. 20/09/03 BY THE R1.

EXT.P3. COPY OF THE REQUEST DT. 11/08/04 BY THE PETITIONER FOR VERIFICATION OF THE DISPENSING UNITS BEFORE THE R1.

EXT.P4. COPY OF THE MAHZAR DT. 12/08/04 PREPARED BY THE R1.

EXT.P5. COPY OF THE NOTICE DT. 12/08/2004 BY THE R1.

EXT.P6. COPY OF THE REPLY DT. 14TH AUGUST, 2004 BY THE P1 BEFORE THE R1.

EXT.P7. COPY OF THE LETTER NO. KM 9(12) 98 DT. 7/1/99 BY THE GOVT. OF INDIA.

EXT.P8. COPY OF THE CIRCULAR NO. C1. 3446/99 DT. 9/11/99 BY THE R3.

EXT.P9. COPY OF THE LETTER NO. B2. 3869/99 8/2/00 BY THE R3.

EXT.P10. COPY OF THE COUNTER AFFIDAVIT DT. 19/08/00 FILED BY THE R3 IN OP NO. 18384/00.

EXT.P11. COPY OF THE JUDGMENT OF THIS COURT IN OP NO. 16992/00 AND OP NO. 18384/00 DT. 25TH JULY, 2001.

EXT.P12. COPY OF THE ORDER IN CMP NO. 13567/92 DT. 12/1/00 OF THE HIGH COURT OF ALLAHABAD.

EXT.P13. COPY OF THE DO LETER DT. 30/3/00 BY THE R4.

EXT.P14. COPY OF THE LETTER NO. C1. 3294/02 DT. 16/08/02 BY THE R3.

EXT.P15. COPY OF THE RELEVANT EXTRACT OF THE LATEST MARKETING DISCIPLINE GUIDELINES (MDG) EFFECTIVE FROM 1/08/2005.

EXT.P16. COPY OF THE ORDER OF THIS COURT IN CRL. MC NO. 513/1989 DATED 16/2/90.

RESPONDENT'S EXHIBITS

EXT.R1A. EXHIBIT P3 LETTER WAS POSTED ON 12/08/2004 AS EVIDENT FROM THE POSTAL COVER.

TRUE COPY

PIUS C. KURIAKOSE, J.

W.P.(C)No. 27563 OF 2005

Dated this the 12th day of September, 2007

J U D G M E N T

The first petitioner is a partnership firm doing business as dealer for the Hindustan Petroleum Corporation and petitioners 2 and 3 are its partners. The first respondent is the Assistant Controller of Legal Metrology, Trichur. Third respondent is Controller of Legal Metrology, Trivandrum and the 4th respondent is Director of Legal Metrology, Government of India. Respondents 2 and 5 are respectively represented by Public Prosecutor and the Union of of India represented by Secretary to Government of India, Ministry of Consumer Affairs and Public Distribution. This writ petition has been filed under Article 226 and 227 of the Constitution of India seeking to quash Ext.P1 complaint submitted before the Judicial First Class Magistrate Court III by the first respondent under section 63 f the Standards of Weights & Measures (Enforcement) Act 1985 and all proceedings which are now continuing before that court in summary trial case No.874 of 2005 registered pursuant to Ext.P1. According to the petitioners, first petitioner is an authorised dealer of Hindustan Petroleum Corporation at Trichur and in the retail outlet there are three dispensing units, (1) MIDCO HSD 7C 2869, (2) MIDCO HSD 6 C 1728 & (3) ZLINE MS F2

0785. All these three dispensing units were denied certificate of verification issued by the first respondent and Ext.P2 is copy of the certificate of verification which is valid upto 20-9-04. These three units were due verification and re-stamping on 20-9-04. While checking the correctness, erratic delivery was noticed and hence Ext.P3 request was made on 11-8-04 for verification of the dispensing unit and for annual stamping. Pursuant to Ext.P3 the inspection was conducted and it was found that as regards two dispensing units erratic delivery was within the permited limits. But as regards dispensing unit No. MIDCO HSD 6C 1728 erratic delivery was beyond the permissible limits. Ext.P4 is copy of the mahazar prepared as regards that unit and on the basis of Ext.P4 the first respondent issued Ext.P5 memo of stoppage of supply through that dispensing unit. The petitioner points out that in the inspection conducted by the first respondent the seals of the three dispensing units were found to be intact. Therefore to Ext.P5 the petitioner submitted Ext.P6 reply. In the meanwhile praying for a direction to re-stamp the dispensing unit, the petitioners approached this Court by filing WP(C) No. 24959/04 and on a direction being issued annual stamping of the units was done and the writ petition was closed. It is being not satisfied

with Ext.P6 explanation that the first respondent has filed Ext.P7 complaint before the Magistrate Court with the sanction of the third respondent. Summary trial case No. 847/05 stands posted for appearance of the petitioners who are accused therein. The petitioner then refers and quotes sections 24, 26, 27, 39 and 60 of the Weights and Measures (Enforcement) Act 1985. The petitioner submitted that dispensing pump is a measure and as per clause 5 of 8th Schedule to Rule 13 of the Standards of Weights and Measures (General) Rules 1987 permissible error ranges from 15 ml. To plus 30 ml. In respect of the dispensing unit for 5 litres. On the basis of the statutory permitted quantity petitioner contends that a dispensing having a valid certificate of verification is deemed to be conforming to the stands unless on inspection it is found otherwise. According to the petitioner if on inspection under section 27 there is excess or short delivery and permissible limits, then if the seal is intact the procedure to be followed is procedure provided under section 28 only if the seal is broken and prosecution can be launched for offences under sections 37 and 39. Petitioner concedes that if a person fails to implement the direction of the inspector under section 38 then also prosecution under section 39 can be initiated against him. Petitioner relies on Ext.P7

letter of clarification issued by the 4th respondent on 7-1-1999 in this regard. Ext.P7 has been followed by the third respondent in his communications Exts.P8 and P9 respectively dated 9-11-1999 and 8-2-2000. The petitioner submits that O.P. 18384/2000 was filed by the All Kerala Federation of Petroleum Traders complaining about the delay in making adjustments for correct delivery after inspection. In that writ petition Ext.P10 counter affidavit was filed on behalf of the second respondent. It is stated in Ext.P10 at paragraph 4 that even if the seal is intact dispensing unit can go wrong depending upon the various factors like the temperature, wear and tear of the unit, pressure etc. The above O.P. and O.P. 16992/2000 were disposed of by a learned single Judge of this court by passing Ext.P11 judgment. Under Ext.P11 a time limit has been prescribed for resealing of the dispensing units.

2. Petitioner concedes that the Uttar Pradesh Petroleum Traders' Association, Allahabad had filed a writ petition before the Allahabad High Court praying for a declaration that sections 39, 60 and 61 of the Standards of Weights and Measures (Enforcement) Act, 1985 are unconstitutional and void and to restrain the respondents from prosecuting them for violation of the aforementioned provisions and

that the Allahabad High Court dismissed the writ petition after upholding constitutional validity of the impugned provisions. Ext.P12 is copy of the judgment of the Allahabad High Court. But the petitioner claims that the question whether the procedure under section 28 should follow before launching prosecution under section 39 was not an issue at all in the said judgment. After P12 judgment the 4th respondent has issued letters to all the Controllers of Legal Metrology in the country containing several directives including to ensure that the seal is intact. Ext.P13 is copy of the said letter. The petitioners submit that on misunderstanding of Ext.P13 the third respondent has issued communication to the representatives of petroleum traders to the effect that in view of Ext.P12, Ext.P9 has become irrelevant and even if the seal is in tact, prosecution can be launched under section 37 or 39 of the Act. Ext.P14 is copy of that communication. Petitioners understand that Ext.P14 has been challenged by the All Kerala Federation of Petroleum Traders. The petitioners now refer to rule 17 of the Kerala Standards and Weights (Enforcement) Rules, 1992 containing provisions for verification and stamping of dispensing units and quotes rule 17 in full. According to the petitioner rule 17 is in conformity with Section 28(3) of the Act. The petitioners point out

that public sector oil companies have framed Marketing Discipline Guidelines with the approval of the Central Government. As per relevant extract of the latest marketing discipline guidelines effective from 1-8-2005 for short delivery of products when the seals are intact , there is no penal action other than suspension of sales till recalibration. Ext.P15 copy of the relevant extract is strongly relied on by the petitioners in this regard.

The third petitioner is the aged mother of the second petitioner and she is only a sleeping partner in the first petitioner firm. She does not play any active role in the business of the first petitioner firm. Petitioner relies on Ext.P16 judgment of this court in Crl. M.C. No.513/89 wherein this court considered an application under section 482 of the Cr.P.C. by four ladies who were sleeping partners in partnership business by name Jayalakshmy Silk House quashed the complaint filed against them by the Inspector of Weights and Measures in so far as the complaint was against those ladies. On the basis of Ext.P16 it is contended that in any event the complaint so far as it is directed against third respondent is liable to be quashed. The petitioners also pointed out that inspection under section 27 is periodically done in almost all the petroleum outlets through out the

State. But if the statistics are called for It will be seen that prosecutions are launched only in the case of dealers who are not agreeable for compounding. If the dealer prepared to pay the compounding fee of Rs.5000/- to Rs.10,000/- as the case may be to the department, prosecution will not be launched. Petitioner submits that if this court calls for records relating to inspection and stamping of dispensing unit it will be seen that there are several instances wherein at the time of re-stamping, errors found to be beyond the permissible limits, at the time of original inspection were surprisingly found to be absent. According to the petitioners, it is due to no fault on their party that the dealers are prosecuted. Dispensing units are supplied by the oil companies. Substitution of new dispensing units is also within the discretion of the oil companies. Being mechanical devices operated by electricity and pressure mechanism, errors and omissions are possible at every moment. If the inspection reports and re-stamping reports for a few years are called for, it will be revealed that there is no fairness or rationale behind the prosecution. According to the petitioner, the necessary parties to the writ petitioner are only respondents 1 and 2, but the other respondents have been impleaded only for the purpose of assisting this court for a proper adjudication of

the issues. On the basis of the above averments the petitioners have raised grounds A to H and have filed the writ petition for the relief already indicated.

Counter affidavit has been filed by the first respondent Assistant Controller of Legal Metrology, Trichur alone. Through the counter affidavit the first respondent denies the averments in the writ petition and attempts to repudiate the grounds raised by the petitioners. Counter affidavit justifies the initiation of prosecution proceedings against the petitioners . Counter affidavit states that the deponents predecessor in office Smt.R.Reena Gopal and her squad inspected the trade premises of the petitioners dispensing unit on 12-8-2004 and detected short delivery in the distribution of diesel through their dispensing pump MIDCO HSD 6 C 1728. Thereafter Ext.P4 mahazar was prepared. Subsequent to Ext.P4 mahazar, Ext. P5 notice was issued to the petitioners stopping distribution of diesel through the said dispensing unit. Subsequently on 16-8-04 registered notice was issued to the petitioners for calling upon objections if any for not taking prosecution proceedings against the petitioners. The above notice was served on the petitioners on 16-8-04. It is stated in the counter affidavit that after the inspection on 12-8-2004 the petitioners

sent a registered letter to the first respondent anti-dating the same as 11-8-2004 (Ext.P3) requesting to verify the dispensing unit and to do annual stamping. Counter affidavit submits that letter with the postal cover relating to Ext.P3 will show that the letter was posted only on 12-8-2004. Ext.R1(a) is the cover. Though Ext.P6 reply was submitted by the petitioners on 25-8-04 explanation offered by them was not satisfactory and this was why Ext.P1 complaint was filed against them after getting sanction from the Controller of Legal Metrology.

I have heard the submissions of Sri.K.Jaju Babu, learned counsel for the petitioner, Sri.Deepu Thankan, learned counsel for respondents 4 and 5 and Sri.Shyson P.Manguzha, learned Government Pleader for R2. Sri.Jaju Babu would argue that it is admitted that there was erratic delivery in respect of only one of the three dispensing units beyond the permissible limits. Counsel submitted that it was also admitted that seal of the dispensing units was kept intact. It was also not disputed that the dispensing unit had a valid certificate of verification evidenced by Ext.P2. Counsel argue that a dispensing unit cannot be touched by a dealer other than in the presence of a mechanic of the oil company. Therefore dealer is not answerable for

any short delivery when the seal is intact. What the respondents are compelling the dealer to do is something which is impossible. A harmonious reading of presumptions under sections 26 and 60 of the act read with section 28 compels the respondents to follow the procedure under section 28(3) in case short delivery is noticed, before launching prosecution. Counsel argued that in case of excess deliveries on inspection under section 27, nobody launches a prosecution and there is no provision for compensating the dealer or the oil company. In the case of excess delivery noted on inspection proceedings under section 28(3) should be taken. The prosecution which is now initiated is illegal and sure to fail. Compelling a person to face such a prosecution amounts to abuse of legal process. Counsel referred to sections 26, 27, 28 and 39 of the Standards of Weights and Measures (Enforcement) Act 1985 in his submissions. My attention was drawn to Exts.P10, P12, P14 and P15. According to the learned counsel there was absolutely no justification for continuing with the prosecution. The submissions of Mr.Jaju Babu were not resisted by learned counsel for R4 and R5. Sri.Shyson P.Manguzha, learned Government Pleader tried to resist the submissions of Mr.Jaju Babu. Drawing my attention to Ext.R1(a) learned Government Pleader

argued that Ext.P3 letter dated 11-8-04 was an anti-dated letter which was actually posted on 12-8-04. A person who attempts to play fraud on statutory authorities is not entitled to exercise of the extraordinary constitutional jurisdiction of this court under article 226. Learned Government Pleader however, had no effective answer to Mr.Jaju Babus submissions based on Ext.P16 for an immediate exoneration for the third petitioner who is an old lady and sleeping partner in the first petitioner firm.

I have considered the rival submissions addressed at the Bar in the light of the statutory provisions to which my attention was drawn as well as the various exhibits placed on record by the petitioner. It is true that Ext.P3 was submitted anti-dating the same as 11-8-04 only on 12-8-04. But whether this court should ignore the grounds urged by the petitioner in this writ petition for that misdeed of the petitioner as a matter to be considered. I am of the view that the above question can be answered on the basis of the merits of the grounds raised.

(PIUS C.KURIAKOSE, JUDGE)

ksv/